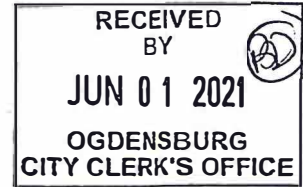


CITY OF OGDENSBURG
ZONING BOARD OF APPEALS

APPROVED MINUTES FOR
MAY 25, 2021



Members Present: William Flynn, Chris Lowery, Patricia Redden-Sargent, Malcolm Casselman,
Members Absent: Steve Schlieter, Chris Lalone, (alternate) both excused
Staff Present: Andrea Smith, Director of Planning and Development, Nicole Woods, Code Enforcement

ALL RECORDS ARE KEPT ACCORDING TO NYS STATUTE.

4:32PM Chairman Flynn called to order the regular meeting of the Zoning Board. This meeting was held in person in accordance COVID-19 guidelines for reduced capacity and social distancing. For members of the public that were unable to attend in person and wish to participate remotely, the meeting also provided remote attendance using Go To Webinar ID: 596-763-347.

1. **Call to order** – Chairman Flynn intro Members of staff also introduced themselves.
2. **Approval of previous minutes** – Chairman Flynn noted that previous minutes from April 27, 2021 required review. Chairman Flynn noted a correction on page 2, line 1: Wodos; also, page 3, line 28 and 35: Smith should be Woods.
 Motion by Mr. Casselman to approve the minutes from April 27, 2021 as corrected, second by Ms. Redden-Sargent. All members voted in support 4/0.
3. **Correspondence** –
 - (a) Ex-Parte Communication – None
 - (b) Written Communication – Ms. Smith stated she had received an email from Dr. Michael Seidman regarding the request for 332 Caroline Street. Ms. Smith read the email into the record (attached to these minutes).
4. **Public Hearing**
 - (a) Variance Requests, Public Hearing – 9 Oak Street: Chairman Flynn asked if there was anyone present to speak at the public hearing for the variance: Applicant requests relief of §221-47 E5(b)(2) Fences – Fences in front yards shall be no more than 4’ in height. Applicant request 6’ fence in front yard.
 Receiving no public comment, Chairman Flynn closed the public hearing at 4:37 PM.
 - (b) Variance Requests, Public Hearing – 332 Caroline Street: Chairman Flynn asked if there was anyone present to speak at the public hearing for the variance: Applicant requests relief of §221 Table 1 Dimensional Regulations prescribe a 15’ Front Yard in the MDR zoning district. Applicant request 5’ to construct a deck.
 Ms. Ellen Seidman spoke as a neighbor to the Elks. She stated that her husband had sent the email previously read but was unable to attend the meeting tonight in person. She stated she had concern regarding the noise that might result from the construction of a deck for outdoor dining from the only bar on all of Greene Street. She stated that while the Elks have been good neighbors and that she too thinks of herself as a good neighbor, this type of development may depreciate the property value of her home.

1 Mr. Stuart Rishe asked if he could respond. Chairman Flynn noted that the Applicant would be
 2 given time to present their request following the public hearing.

3
 4 There were no further comments, the public hearing was closed at 4:42 PM.
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7 **5. New Business –**

8 9 Oak Street Area Variance: Applicant, Mr. Matthew Farrell stated he was requesting a variance that
 9 would allow him to construct a 6’ fence at his property which is located on a corner. He stated he is
 10 requesting a 1’ setback from the sidewalk to make the most of his yard and would like a 6’ fence for
 11 greater privacy. He added that he was proposing a diagonal to stay away from the corner.
 12

13 Motion by Mr. Casselman to approve the variance as requested relieving the maximum 4’
 14 high front yard fence in the City’s MDR district. Allowing for a front yard fence of 6’ with a
 15 1’ front yard setback, 2nd by Mr. Lowery.
 16

17 Discussion – Discussion ensued with the Board and the Applicant as to whether or not he
 18 would be amenable to a greater setback, of 5’ opposed to the 1’ requested. Mr. Farrell replied
 19 that he would discuss a 5’ setback. Mr. Casselman explained that staff has expressed a
 20 concern regarding the 1’ setback. Mr. Farrell stated a 5’ setback was better than the 15’
 21 required.
 22

23 Mr. Casselman moved to amend his previous motion to grant 1’ setback to increase that to 5’
 24 as recommended by Staff, Mr. Lowery 2nd the motion to amend.
 25

26 Ms. Smith called the roll on the amended motion to provide for a 5’ setback in the MDR
 27 district allowing for a 6’ fence.

Moved:	Casselman			
Second:	Lowery			
VOTE	Aye	Nay	Abstain	Absent
Chairman Flynn	X			
Ms. Redden-Sargent	X			
Mr. Lalone				X
Mr. Casselman	X			
Mr. Schlieter				X
Mr. Lowery (alt.)	X			

28 The motion to amend received sufficient affirmative votes, 4/0.
 29

30 Chairman Flynn asked Ms. Smith to read aloud the resolution for approval. Ms. Smith read
 31 aloud as follows:
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33 **RESOLUTION**

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 35 CITY OF OGDENSBURG ZONING BOARD OF APPEALS

36 2021-006

37 AREA VARIANCE TMN 59.030-4-62
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WHEREAS, an application has been filed with the Zoning Board of Appeals of the City of Ogdensburg, St. Lawrence County, New York (“the Board”) seeking a Variance under Chapter 221 entitled Zoning where a front yard fence is limited to a maximum is 4’. Applicant requests 6’ with a 1’ front yard setback. Requested by Matthew Farrell, (“Applicant”) for 9 Oak Street, Ogdensburg, New York; and,

WHEREAS, the Board, acting on said application, duly advertised in the Watertown Daily Times and sent written notice to all persons listed in the petition as owning property within 100 feet of the premises in question and held a public hearing on said application today, May 25, 2021. All those desired to be heard were heard and their testimony duly recorded at this hearing; and

WHEREAS, in accordance with 239-m requirements, the application did not require review by the St. Lawrence County Planning Offices; and

WHEREAS, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has determined this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(17) and is not subject to further environmental review; and

WHEREAS, Members of the Board are familiar with TMN 59.030-4-62, and the area in which the proposed relief of maximum 4’ front yard fence height is sought and grant approval of a 5’ front yard setback for a 6’ fence; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

Chairman Flynn asked Ms. Smith to review the findings of fact. Ms. Smith read aloud:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created.

This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character.

Staff Comment: Field inspection indicated there are no similar 6’ fences in close proximity to this parcel, and the construction of such a fence with a 1’ setback will change the character of the neighborhood. The proposed angle of the fence will keep the proposed fence clear of sight lines so as not to be a danger to traffic at the adjacent intersection.

2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve the necessity of an area variance.

This test charges the Board to investigate whether there is a reasonable construction or alternative to the proposal the applicant has made. For example, can the structure be placed so the existing zoning regulations would allow such construction without the need for a variance?

Staff Comment: The Applicant is requesting 14’ of relief from the required 15’ front yard setback for the construction of a 6’ fence. There are reasonable alternatives including compliance with the 4’ fence

1 allowance. However, the Applicant does have an inherent hardship of two front yard, being a corner lot.
 2 A reasonable alternative that would allow the applicant to achieve their goal while upholding the spirit of
 3 the ordinance would be granting of a lesser variance, for example 5’ setback where 15’ is required.

4 **3. Whether the variance is substantial.**

5 The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what
 6 degree will the regulations be varied.

7 Staff Comment: The Applicant request a 1’ setback for a 6’ fence where 15’ is required. This is more than
 8 a 90% reduction which is substantial.

9 **4. Whether the variance will have an adverse impact on physical or environmental conditions in the
 10 neighborhood or district.**

11 The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here
 12 should be questions relating to such elements as drainage, runoff, noise, traffic
 13 patterns, access for emergency vehicles, impact on utility services, and effect on any sensitive
 14 environmental concerns.

15 Staff Comment: As previously stated, the proposed design with an angle at the corner does allow the fence
 16 to provide privacy and enclosure without detrimentally impacting visibility at the intersection for traffic.
 17 There are no detrimental impacts on run off, or sensitive environmental areas from the proposed fence.

18 **5. Whether there has been any self-created difficulty.**

19 The fifth test requires the Board to assess whether the request for the variance has been triggered by a
 20 situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against the
 21 owner, but need not (as in the case of the use variance) deny relief altogether.

22 Staff Comment: The applicant has owned the property less than 1-year with all current regulations
 23 pertaining to fences and setbacks in place since 1992. Furthermore, there are reasonable alternatives to this
 24 request that either allow the Applicant to fully comply with the ordinance or provide greater compliance
 25 while still being afforded reasonable relief. Therefore, this difficulty is entirely self-created.

26
 27 Chairman Flynn asked Ms. Smith to read aloud the recommendation from staff.

28
 29 Ms. Smith stated: In balancing the benefit to the Applicant against the detriment to the health, safety,
 30 and welfare of the neighborhood, staff finds that the applicant does have reasonable alternatives to this
 31 request. Therefore, in accordance with NYS standards for granting variances staff recommends denial
 32 as requested. However, staff recommends approval with a modification to approve the variance as
 33 relieving the maximum 4’ high front yard fence in the City’s MDR district. Allowing for a front yard
 34 fence of 6’ with a 5’ front yard setback.

35
 36 No further discussion, Mr. Flynn asked Ms. Smith to call the roll.

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Moved:	Casselman				
Second:	Lowery				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.
Ms. Redden-Sargent	X				I agree with the findings of fact and staff recommendation.
Mr. Lalone				X	
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Mr. Schlieter				X	

1 Chairman Flynn asked the Applicant if they would be willing to include a landscaping plan as requested.
2 Mr. Rishe replied yes, adding that he was not quite sure what shrubs would be most suitable...some type
3 of narrow evergreen maybe. Ms. Smith said if the condition was approved Mr. Rishe was welcome to
4 come by the office and she could review it with him and make some suggestions.

5
6 Mr. Casselman stated he would like to amend his motion to include the condition that a landscape plan be
7 submitted to the Director of Planning for approval, Mr. Lowery 2nd the request to amend. All members
8 voted in support of the motion to amend, 3/0/1 (Ms. Redden-Sargent abstained).

9
10 Chairman Flynn asked Ms. Smith to read aloud the resolution.

11
12 Ms. Smith read aloud the following:

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14 **2021-007**

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16 **AREA VARIANCE TMN 48.079-1-19**

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19 **WHEREAS**, an application has been filed with the Zoning Board of Appeals of the City of
20 Ogdensburg, St. Lawrence County, New York (“the Board”) seeking a Variance under Chapter
21 221 entitled Zoning where the front yard setback is 15’, Applicant requests 5’. Requested by
22 Stuart Rishe – Lodge Trustee for the Ogdensburg Elks Lodge #772, (“Applicant”) for 332
23 Caroline Street, Ogdensburg, New York; and,

24
25 **WHEREAS**, the Board, acting on said application, duly advertised in the Watertown Daily
26 Times and sent written notice to all persons listed in the petition as owning property within 100
27 feet of the premises in question and held a public hearing on said application today, May 25,
28 2021. All those desired to be heard were heard and their testimony duly recorded at this hearing;
29 and

30
31 **WHEREAS**, in accordance with 239-m requirements, the application is subject to review by
32 the St. Lawrence County Planning Offices and was returned for local action with no findings
33 of county-wide significance on May 14, 2021; and

34
35 **WHEREAS**, the Ogdensburg Zoning Board Appeals, as Lead Agency conducting SEQR has
36 determined this a Type II Action under SEQRA pursuant to 6 NYCRR 617.5(c)(17) and is not
37 subject to further environmental review; and

38
39 **WHEREAS**, Members of the Board are familiar with TMN 48.079-1-19 and the area in which
40 the proposed relief of minimum 15’ front yard setback is sought; now therefore,

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42 **BE IT RESOLVED**, that the Zoning Board of Appeals makes the following Findings of Fact
43 and Conclusions of Law in this matter:

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Chairman Flynn asked Ms. Smith to present the findings of fact.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created.

This test requires the Board to consider such things as the undesirable changes and potential impacts on neighboring property values and character.

Staff Comment: The property is located in the moderate density residential zoning district and is surrounded by a mix of residential and business uses. The addition of a deck for outdoor seating does have the potential to increase noise within the neighborhood that may be disruptive to adjacent residential uses, but this is not out of character from the existing use/uses.

2. Whether the applicant can achieve his goals via a reasonable alternative which does not involve the necessity of an area variance.

This test charges the Board to investigate whether there is a reasonable construction or alternative to the proposal the applicant has made. For example, can the structure be placed so the existing zoning regulations would allow such construction without the need for a variance?

Staff Comment: The setback along Greene Street is presently 20' +/-, therefore the addition of any useable deck space will require relief of the required 15' setback. The porch on the Caroline Street side of the property serves as the primary entrance into and out of the building and provides ADA accessibility which limits it's use for outdoor seating and dining.

3. Whether the variance is substantial.

The third test requires the Board consider how substantial is the variance in physical terms- i.e. to what degree will the regulations be varied.

Staff Comment: Where a 15' front yard setback is required the applicant seek 5', or 66% relief which is substantial.

4. Whether the variance will have an adverse impact on physical or environmental conditions in the neighborhood or district.

The fourth test requires the Board look closely at the purely physical nature of the proposal. Included here should be questions relating to such elements as drainage, runoff, noise, traffic patterns, access for emergency vehicles, impact on utility services, and effect on any sensitive environmental concerns.

Staff Comment: The proposed front deck will not obstruct site lines for traffic at the intersection, nor will the proposal impact sensitive environmental areas. The use of the deck for congregating outdoors, could result in an increase in noise.

5. Whether there has been any self-created difficulty.

The fifth test requires the Board to assess whether the request for the variance has been triggered by a situation or difficulty which the owner has created himself. If so, the Board must weigh that fact against the owner, but need not (as in the case of the use variance) deny relief altogether.

Staff Comment: As stated by the Applicant, the building was reconstructed in 1964 after a fire. The current ordinances have been in place since 1992 regulating setbacks in the MDR district. Therefore, this request is self-created.

No further discussion, Mr. Flynn asked Ms. Smith to call the roll.

Moved:	Casselman				
Second:	Lowery				
VOTE	Aye	Nay	Abstain	Absent	Reason
Chairman Flynn	X				I agree with the findings of fact and staff recommendation.

Ms. Redden-Sargent			X		
Mr. Lalone				X	
Mr. Casselman	X				I agree with the findings of fact and staff recommendation.
Mr. Schlieter				X	
Mr. Lowery (alt.)	X				I agree with the findings of fact and staff recommendation.

1
2 Based on the above Findings of Fact, and after reviewing the application, sketches and plans at this
3 meeting, testimony at the hearings, and other documents submitted by the Applicant, the Board
4 determines that the proposed area variance requesting relief of §221 Table 1 Dimensional Regulations
5 prescribing a 15' Front Yard in the MDR zoning district will be approved with conditions, 3 yay, 0 nay, 1
6 abstain, 1 absent, the request is approved 3/0/1.

7
8 Ms. Smith explained that the request had been approved with conditions proving a 5' setback where 15' is
9 required. She further noted that building permits would be required and could be obtained from the Code
10 Office as early as tomorrow. Ms. Smith asked if the applicant had questions, the Applicants replied no, and
11 thanked the board.

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14 **6. Old Business**

- 15 a) Driveways §221-51 C(4)(b): Returned from Planning Board. Ms. Smith read from the
16 Planning Board's minutes of April 20th their recommendation regarding setbacks for
17 driveways: where a percentage could be included where the setback of 3' would apply to
18 improvements in excess of a "substantial improvement", something like 50%. Several
19 Board members agreed that would be reasonable to have to adhere to the "new driveway
20 setback of 3'". All members of the Zoning Board agreed with their recommendation. Ms.
21 Smith stated that the Planning Board is working on a redline of the language to that effect
22 for a potential text change. No action was taken.

23
24 **7. Member Comments**

- 25
26 **8. Adjournment** – Motion by Ms. Redden-Sargent to adjourn the meeting, 2nd by Mr. Lowery.
27 Meeting adjourned at 6:35 PM by a vote of 4/0.

28
29 **Next REGULAR Meeting Date: Tuesday, June 22, 2021 at 4:30 PM**